

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3394 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL JADAV PARBAT KJAGANI

Versus

STATE OF GUJARAT

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Appearance:

MR DU SHAH for Petitioner  
MR D P Joshi, AGP for Respondent No. 1  
NOTICE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/03/2000

ORAL JUDGEMENT

This is a petition under Article 14 and 226 of  
the Constitution of India read with Section 65 of the  
Bombay Land Revenue Code.

2. The petitioner applied for permission to use his land survey No.652/1, admeasuring 17 Gunthas situated at Moti Marad in Dhoraji Taluka, Rajkot for being used for non-agricultural purpose. Permission was granted by the District Panchayat, Rajkot by order dated 19.12.1986 which is placed at page 7 to the petition.

3. The third respondent challenged the aforesaid order before the Secretary (Appeals) to the Revenue Department of the State of Gujarat. It was registered as SRD Land Appeal No.1987. There the said Officer allowed the appeal of the third respondent and set aside the order of the District Panchayat and directed that in case the present petitioner makes fresh application, the said application should be decided on merits after proper enquiry on the subject and after hearing the persons concerned in the matter. The said order was passed on 17.10.1987. The petitioner has challenged the said order on various grounds.

4. I have heard Mr D U Shah, learned Advocate for the petitioner and have perused the papers. It appears from the order of the Secretary to the Government of Gujarat dated 17.10.1987 that though the appeal of the third respondent has been allowed and the permission to use the land for N.A. purpose has been quashed and set aside, the matter did not rest there. The Secretary further directed that in case any fresh application comes from the petitioner, it shall be heard on merit and even the persons concerned shall also be heard and the matter may be disposed of only after local inspection. This would show that it is as good as an order remanding the matter to the original authority. When a particular person has come with an objection, it is clearly in the interest of justice to hear such persons before passing any order. Here, it is the contention of the third respondent that certain persons had a right of passage through the land in dispute. It is therefore, their apprehension that the property in question was put to N.A. use, then in that case, the right of passage may be seriously injured. This contention was required to be dealt with before permitting the petitioner to use his land for N.A, purpose. Therefore, ex-facie, the impugned order does not appear to be illegal or against the record which was available with the said office.

5. In the aforesaid view of the matter, the petitioner cannot be said to have any right in the present petition when this Court has exercised its extra-ordinary jurisdiction under Article 226 of the

Constitution.

6. Right of the petitioner, if any, to use the land for N.A. purpose has not been totally negatived even by the highest authority of the State. Only the matter has been remanded for re-consideration as indicated above. In view of the above position, this is not a fit case wherein this Court should exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India. In this view of the matter, this petition deserves to be dismissed and it is accordingly dismissed with no order as to costs. Rule discharged. Interim relief stands vacated.

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msp